

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 * * *

4 DEMETRI ALEXANDER,

Case No. 2:15-cv-02485-APG-VCF

5 Plaintiff,

ORDER

6 v.

7 NDOC et al.,

8 Defendants.

9
10 **I. DISCUSSION**

11 Plaintiff is a prisoner proceeding *pro se*. Plaintiff has submitted a civil rights
12 complaint pursuant to 42 U.S.C. § 1983 and an application to proceed *in forma*
13 *pauperis*. (Dkt. #1, 1-1). This Court has previously found that, on at least three (3)
14 occasions, this Court and the Ninth Circuit Court of Appeals have dismissed civil actions
15 and appeals commenced by Plaintiff while in detention as frivolous or for failure to state
16 a claim upon which any relief may be granted.¹

17 Pursuant to 28 U.S.C. § 1915(g), “if [a] prisoner has, on 3 or more prior
18 occasions, while incarcerated or detained in any facility, brought an action or appeal in a
19 court of the United States that was dismissed on the grounds that it is frivolous,
20 malicious, or fails to state a claim upon which relief may be granted,” he may not
21 proceed *in forma pauperis* and, instead, must pay the full \$400.00 filing fee in advance
22 unless he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

23 Even though Plaintiff has “three strikes” the Court dismisses this case on the
24 merits for maliciousness. The complaint in this case is the exact same complaint that
25 Plaintiff filed on November 25, 2015 in *Alexander v. NDOC et al.*, 2:15-cv-02244-APG-

26 ¹ See *Alexander v. Nevada Department of Corrections et al.*, 3:14-cv-00596-MMD-WGC
27 (dismissed by the district court for failure to state a claim and dismissed by the appellate
28 court as frivolous); *Alexander v. Sullivan et al.*, 3:14-cv-00589-RCJ-WGC (dismissed by
the district court for failure to state a claim and dismissed by the appellate court as
frivolous). The Court takes judicial notice of its prior records in the above matters.

1 PAL. (*Compare* 2:15-cv-02244-APG-PAL, Dkt. #1-1, *with* 2:15-cv-02485-APG-VCF,
2 Dkt. #1-1). The only difference between the two complaints is the date that Plaintiff
3 signed each one with. In 2:15-cv-02244-APG-PAL, Plaintiff signed the complaint on
4 November 19, 2015. (Dkt. #1-1 at 17). In the present case, Plaintiff signed the
5 complaint on December 17, 2015. (Dkt. #1-1 at 17).

6 Duplicative lawsuits filed by a plaintiff proceeding *in forma pauperis* are subject to
7 dismissal as either frivolous or malicious under 28 U.S.C. § 1915(e). *See Cato v.*
8 *United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (citing *Bailey v. Johnson*, 846
9 F.2d 1019, 1021 (5th Cir.1988) (holding that repetitious litigation of virtually identical
10 causes of action is subject to dismissal as malicious)); *Pittman v. Moore*, 980 F.2d 994,
11 994-95 (5th Cir.1993) (holding that it is malicious for a “pauper” to file a lawsuit that
12 duplicates allegations of another pending federal lawsuit by the same plaintiff). An *in*
13 *forma pauperis* complaint that merely repeats pending or previously litigated claims may
14 be considered abusive and dismissed under § 1915(e). *See Cato*, 70 F.3d at 1105 n.2;
15 *Bailey*, 846 F.2d at 1021.

16 Here, the Court finds that the present complaint is identical to the complaint filed
17 in another pending federal lawsuit by the same plaintiff. As such, the Court finds that
18 this second complaint is a duplicative lawsuit that was filed one month after the first one.
19 The Court dismisses this lawsuit, with prejudice, as malicious and finds that this
20 dismissal constitutes another strike under 28 U.S.C. § 1915(g).

21 **II. CONCLUSION**

22 For the foregoing reasons, it is ordered that Plaintiff’s application to proceed *in*
23 *forma pauperis* (Dkt. #1) is denied.

24 It is further ordered that the Clerk of the Court shall file the complaint (Dkt. #1-1).

25 It is further ordered that the complaint is dismissed in its entirety, with prejudice
26 and without leave to amend, for maliciousness because the complaint is duplicative of
27 another pending lawsuit in this Court by the same plaintiff.

28 It is further ordered that Plaintiff currently has “three strikes” pursuant to 28
U.S.C. § 1915(g). This dismissal constitutes an additional strike.

1 It is further ordered that the Clerk of the Court shall enter judgment accordingly.

2 It is further ordered that this Court certifies that any *in forma pauperis* appeal
3 from this order would not be taken "in good faith" pursuant to 28 U.S.C. § 1915(a)(3).

4 Dated: April 7, 2016.

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6 
UNITED STATES DISTRICT JUDGE